BUNGA LAWAS SHIPPING AGENCIES SDN BHD

v.

NUSANTARA WORLDWIDE INSURANCE (MALAYSIA) BHD & ORS

HIGH COURT SABAH & SARAWAK, MIRI
HASAN LAH JC
[SUIT NO: 22-110-98(MR)]
27 MARCH 1999

CIVIL PROCEDURE: *Jurisdiction - High Court - Local jurisdiction - Where cause of action arose - Where defendant resides or has his place of business - Whether s. 23(1)(a) or s. 23(1)(b) of Courts of Judicature Act 1964 applicable - Whether alleged breach of contract of insurance occurred within local jurisdiction of High Court in Sabah & Sarawak at Miri*

This was an application by the defendants to have the plaintiff's action struck out or, alternatively, for the action to be transferred from the High Court in Sabah & Sarawak at Miri to the High Court in Malaya at Kuala Lumpur.

The plaintiff which had its registered office in Kuala Lumpur was the owner of a vessel which was registered in Penang. At the material time, the vessel was insured with the defendants, all of which were insurance companies with registered offices in Kuala Lumpur. As it transpired, the vessel was lost or stolen in Thailand and the plaintiff lodged a claim with the defendants. By a letter addressed to the plaintiff in Miri, Sarawak, the defendants repudiated liability. The plaintiff then filed an action against the defendants in the High Court in Sabah & Sarawak at Miri. At the hearing, the defendants submitted that the High Court in Sabah & Sarawak at Miri had no jurisdiction to try the action as all the defendants which were registered in Kuala Lumpur and the vessel which was registered in Penang were outside the local jurisdiction of the High Court in Sabah & Sarawak by virtue of s. 23(1)(b) of the Courts of Judicature Act 1964 ('the CJA'). Conversely, the plaintiff took the position that the instant court was seised of the jurisdiction by virtue of s. 23(1)(a) of the CJA as the cause of action (breach of contract of insurance by the defendants) arose in Miri, Sarawak.

Held:

[1] The three cases cited by the defendants, *viz*, *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd*, *Sykt Nip Kui Cheong Timber Contractor v. Safety Life and General Insurance Co Sdn Bhd* and *Fung Beng Tiat v. Marid Construction Co* were distinguishable from the instant case. The only relevant criterion for determining the local jurisdiction of the court in those cases was s. 23(1)(b) of the CJA, *ie*, where the defendant concerned resided or had his place of business.

[2] Conversely, s. 23(1)(a) of the CJA was relevant and applicable in determining the local jurisdiction of the court in the instant case. The dispute here emanated from the contract of insurance between the plaintiff and the defendants, and the only issue for determination was where the alleged breach had occurred. The repudiation of the plaintiff's claim by the defendants was the act which gave the plaintiff its cause of complaint. This repudiation was communicated to and received by the plaintiff at its place of business in Miri, Sarawak. Hence, the alleged breach and the cause of action arose within the local jurisdiction of the High Court in Sabah & Sarawak at Miri.

[3] It is not necessary that every ingredient of a cause of action occurs within the jurisdiction; neither is it necessary nor sufficient that the last ingredient which completes the cause of action occurs within the jurisdiction. What is necessary is that the act or omission of the defendant which gives the plaintiff his cause of complaint is formed within the jurisdiction.

[Defendants' application dismissed.]

Case(s) referred to:

Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd [1990] 1 CLJ 262 ***(dist)***
Distillers Co (Bio-Chemicals) Ltd v. Thompson [1971] 1 All ER 694 ***(foll)***
Fung Beng Tiat v. Marid Construction Co [1996] 2 MLJ 413 ***(dist)***
Malacca Securities Sdn Bhd v. Loke Yu [1998] 2 CLJ 22 ***(refd)***
Mee Ying Enterprise Jewellers v. Che Jah Abdullah [1992] 3 CLJ 1617 ***(refd)***
Ng Lai Tien v. Peregrine Finance Ltd [1996] 2 CLJ 496 ***(refd)***
Sykt Nip Kui Cheong Timber Contractor v. Safety Life and General Insurance Co Sdn Bhd [1975] 2 MLJ 115 ***(dist)***

Legislation referred to:

Bankruptcy Rules 1969, r. 101
Courts of Judicature Act 1964, s. 23(1)(a), (b)
Federal Constitution, art. 121
Rules of the High Court 1980, O. 92 r. 4
Rules of the Supreme Court 1957, O. 48A r. 1

Common Law Procedure Act 1899 [NSW], s. 18(4)(a)

For the plaintiff - Kevin Wong; M/s Victor Wong & Chiew
For the defendants - KY Lin; M/s Kadir, Wong, Lin & Co

Reported by Gan Peng Chiang

JUDGMENT

Hasan Lah JC:

By the summons in chambers dated 6 November 1998 the defendants applied for the following orders:

(a) that this action be struck out; alternatively this action be transferred to the High Court in Kuala Lumpur; and

(b) that the costs of and incidental to this application be paid by the plaintiff to the defendants.

The application was made under O. 92 r. 4 of the Rules of High Court and s. 23 of the Courts of Judicature Act 1964 or art. 121 of the Federal Constitution. The defendants' application was supported by the affidavit of Lin Kuan Yuh affirmed on 31 October 1998. The plaintiff filed an affidavit in opposition which was affirmed on 18 November 1996.

Briefly the relevant facts may be stated as follows. The plaintiff company, which has its registered office in Kuala Lumpur is the owner of the Malaysian Vessel "Lawas Cantik" with official number 325375 and registered at the Port of Penang. All the defendants are the insurers having their registered offices in Kuala Lumpur. By a Marine Insurance Policy dated 29 November 1996 made between the plaintiff and the defendants, the defendants agreed with the plaintiff in consideration for a premium of RM117,900 paid by the plaintiff to the defendants to insure the hull, machinery gear equipment of the vessel valued at RM4,500,000 against the perils stated in the said policy. On or around 17 April 1997 the said vessel was totally lost or stolen while under the safe custody of the court in Thailand. Subsequently on 28 July 1997 the plaintiff lodged an insurance claim for the said vessel with the defendants due under the said policy but no payment was made by the defendants in respect thereof. By a letter dated 23 September 1997 addressed to the plaintiff at Lot 608, 2nd Floor, Jalan Permaisuri. P.O. Box 1673, 98008, Miri, Sarawak the 1st defendant informed the plaintiff that the claim was rejected. On 17 October, 1998 the plaintiff filed this action against the defendants in the High Court in Sabah and Sarawak at Miri claiming the payment of RM4,500,000, interest and cost.

At the hearing of this application the learned counsel for the defendants submitted that not only the High Court at Miri has no jurisdiction to try this case but also the High Court of Sabah and Sarawak has no jurisdiction to try this case by virtue of s. 23(1)(b) of the Courts of Judicature Act 1964 because all the five defendants are residing at Kuala Lumpur and the said vessel was registered in Penang, which are outside the local jurisdiction of the High Court in Sabah and Sarawak. In support of that the learned counsel cited the following cases:

(a) *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd* [1990] 1 CLJ 262.

(b) *Fung Beng Tiat v. Marid Construction Co* [1996] 2 MLJ 413.

In his submission the learned counsel for the plaintiff submitted that this court has jurisdiction to try this case by virtue of s. 23(1)(a) of the Courts of Judicature Act 1964 because the cause of action arose in Miri. According to the learned counsel the breach of contract occurred in Miri when the plaintiff actually received the defendants' letter dated 23 September 1997 which was addressed to the plaintiff at Lot 608, 2nd Floor, Jalan Permaisuri, P.O. Box 1673, 98008 Miri, Sarawak. By that letter the defendants rejected the claim made by the plaintiff under the said policy.

For ease of reference I reproduce the provision of s. 23(1) of the Courts of Judicature Act 1964 which provides that:

> Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:
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> (a) the cause of action arose; or
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> (b) the defendant or one of several defendants resides or has his place of business; or
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> (c) the facts on which the proceedings are based exist or are alleged to have occurred; or
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> (d) any land the ownership of which is disputed is situated,
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> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

In *Dayasar Corp. Sdn. Bhd. v C.P. Ng & Co. Sdn. Bhd.* [1990] 1 CLJ 262 the respondent company had its registered office in Kuching, Sarawak. The petitioner filed the petition to wind up the respondent company in the High Court at Johore Bahru. It was held in that case that since the respondent company was residing in Kuching the matter should really be filed in the Borneo High Court, in particular Kuching.

In *Syarikat Nip Kui Cheong Timber Contractor v. Safety Life and General Insurance Co. Sdn. Bhd.* [1975] 2 MLJ 115, the plaintiffs were a firm of contractors having their place of business in Tawau, Sabah and the defendants were an insurance company having their registered office in Kuala Lumpur. The plaintiffs, suing as a firm, filed a specially indorsed writ against the defendants claiming *inter alia,* a sum of RM26,000 and consequential reliefs. By way of notice of motion the defendants applied for the setting aside of the writ on the ground that it did not comply with O. 48A r. 1 of the Rules of Supreme Court 1957. Hashim Yeop A. Sani J (as he then was) held that the word "jurisdiction" in O. 48A r. 1 of the Rules of Supreme Court 1957 referred to the territorial jurisdiction and as such the plaintiffs could not avail themselves of that provision but should sue in the name of the co-partners.

In *Fung Beng Tiat v. Marid Construction Co.* [1996] 2 MLJ 413 the creditor filed a bankruptcy petition against the debtor in the High Court at Kuala Lumpur. The debtor was, for the one year preceding the presentation of the petition, not resident in Kuala Lumpur or in any other state within Peninsular Malaysia. He was in fact ordinarily resident in Sandakan, Sabah during the relevant period. Based on these facts the debtor argued that the creditor ought to have presented the petition at the High Court in Sabah and not at the High Court in Malaya. On appeal to the Federal Court the creditor's petition was struck out with liberty to file afresh in the High Court in Sabah and at p. 419 Gopal Sri Ram JCA said:

> First, it is crystal clear from art. 121 of the Federal Constitution that there are two separate High Courts in Malaysia exercising distinct territorial jurisdiction over different geographical areas of the country. There is the High Court in Malaya and there is the High Court in Sabah and Sarawak. Each has jurisdiction over disputes that arise within its territory.

It is to be observed that the decisions made by the Court in the three cases cited above were based upon the facts that the parties concerned were residing or carrying on business outside the local jurisdiction of the High Court of Malaya. On that premise the respondents in the present case submitted that this court has no jurisdiction to try the present case against the five defendants who are residing at Kuala Lumpur.

With respect I do not think the decisions in those three cases support the defendants' contention that this court has no jurisdiction to hear this case as the defendants are risiding at a place outside the local jurisdiction of the High Court in Sabah and Sarawak. The decisions in those three cases were made according to the peculiar facts and issues in those cases whereby the only factor relevant for the purpose of determining whether

the court had the local jurisdiction to try those cases was the place where the parties risided or carried on business at the material time. In *Dayasar Corp. Sdn. Bhd's* case the petition was filed to wind up the respondent company which had its registered office in Kuching. So for the purpose of winding up of the respondent company para. (b) of s. 23(1) of the Courts of Judicature Act 1964 was the only factor relevant in deciding which High Court had the jurisdiction to try the matter. The other factors stated in that s. 23(1) were not relevant.

The *Syarikat Nip Kui Cheong Timber Contractor's* case was decided according to the requirement of O. 48A r. 1 of the Rules of the Supreme Court 1957 and the *Fung Beng Tiat's* case was decided according to the requirement of r. 101 of the Bankruptcy Rules 1969. The issue of jurisdiction relating to the present case however has to be decided according to s. 23(1) of the Courts of Judicature Act 1964 and it has been decided that paras. (a) to (d) to that section must be read disjunctively. (See *Mee Ying Enterprise Jewellers v. Che Jah bte Abdullah* [1992] 3 CLJ 1617, *Ng Lai Tien v. Peregrine Finance Ltd* [1996] 2 CLJ 496 and *Malacca Securities Sdn. Bhd. v. Loke Yu* [1998] 2 CLJ 22)

It is my opinion that para. (a) to the said s. 23(1) is relevant and applicable to the present case. This is a dispute relating to an insurance contract made between the plaintiff and the defendants. As such the only issue for determination for the purpose of this application is where did the breach of contract occur? In *Distillers Co. (Bio-Chemicals) Ltd v. Thompson (by her next friend Arthur Leslie Thompson)* [1971] 1 All ER 694 the point at issue was whether the claim alleged against the first defendant was a cause of action which arose within the jurisdiction of the Supreme Court of New South Wales within the meaning of s. 18(4)(a) of the Common Law Procedure Act 1899 of New South Wales. The Privy Council held that it was not necessary that every ingredient of the cause of action should have occurred within the jurisdiction, nor was it necessary, or sufficient, that the last ingredient, ie, that which completed the cause of action, should have occurred within the jurisdiction, what was necessary was that the act, or omission, on the part of the defendant which gave the plaintiff his cause of complaint should have been formed within the jurisdiction. In the present case I agree with the learned counsel for the plaintiff that the act which gave the plaintiff the cause of complaint was the rejection by the respondents of the insurance claim submitted by the plaintiff. It was communicated to and received by the plaintiff at the plaintiff's place of business and office address at Miri, Sarawak. Hence, the breach of contract occurred in Miri, Sarawak. In *Distillers Co. (Bio-Chemicals) Ltd's* case the Privy Council also held that the failure to give a warning that the goods

would be dangerous if taken by an expectant mother in the first three months of pregnancy the plaintiff was entitled to complain that this warning had not been communicated to persons in New South Wales and it was this omission which gave rise to the cause of action which, therefore arose within the jurisdiction.

For the foregoing reasons I hold that the cause of action in the present case arose within the local jurisdiction of the High Court in Sabah and Sarawak, in particular the High Court at Miri. As such I dismissed the defendants' application with cost.